



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Howell Construction Co., Inc.--Reconsideration

File: B-237231.2

Date: November 3, 1989

DIGEST

General Accounting Office will not review a contracting officer's finding of nonresponsibility of a bidder where the Small Business Administration declines to consider issuance of a certificate of competency on the ground that the bidder is not eligible where it would not be performing a significant portion of the contract.

DECISION

Howell Construction Co., Inc., requests reconsideration of our dismissal of its protest of a determination by the Army that it was nonresponsible under invitation for bids No. DABT10-89-B-0316, for cleaning and decontamination of duct work in a building at Fort Benning, Georgia.

We affirm the dismissal.

The Army determined Howell to be nonresponsible because it did not establish that its proposed subcontractor had the necessary decontamination experience. It then referred the matter to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC). The SBA determined that Howell was ineligible for a COC because Howell's subcontract plans were in conflict with SBA's requirement, 13 C.F.R. § 125.5(b) (1989), that a small business concern perform a significant portion of the proposed contract with its own facilities and personnel. Since the SBA refused to issue a COC, the Army determined to award the contract to the second low bidder.

We stated in our dismissal of Howell's protest that our Office does not review SBA's refusal to issue a COC. Howell states in its request for reconsideration that it is protesting the Army's determination of nonresponsibility, rather than the SBA's refusal to issue a COC, and our Office should review this matter.

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The SBA, not our Office, has the statutory authority to review a contracting officer's finding of nonresponsibility and then to determine conclusively a small business concern's responsibility. See 15 U.S.C. § 637(b)(7)(A) (1988). Moreover, a finding of COC ineligibility by the SBA on the ground that a bidder would not be performing a significant portion of the contract is tantamount to an affirmation of the procuring agency's determination of nonresponsibility. Therefore, the matter is not subject to our review absent a showing either of possible fraud or bad faith or that the SBA's ineligibility finding may be inconclusive because the small business is able to introduce new evidence of its eligibility for a COC. Twin Tech Mgmt., Inc., B-230862, July 22, 1988, 88-2 CPD ¶ 71. Howell has failed to allege any facts which indicate bad faith or fraud on the Army's part, or that the SBA's finding was inconclusive.

Accordingly, the dismissal is affirmed.


James F. Hinchman
General Counsel